

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KAREN GALLION, a single woman,

Plaintiff,

v.

MEDCO HEALTH SOLUTIONS,
INC.; Administrator of the
MEDCHOICE DISABILITY
PROGRAM; and DISABILITY
MANAGEMENT ALTERNATIVES,
LLC, third party administrator and
wholly-owned subsidiary of HEWITT
ASSOCIATES, LLC, and
HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY, third party
claims administrator for Medchoice
Long-Term Disability Program,

Defendant.

NO: 13-CV-0135-TOR

STIPULATED PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Protective Order (ECF No. 11). Pursuant to Federal Rule of Civil Procedure 26, and it appearing that discovery in the above-captioned matter will involve the disclosure of confidential

1 information, it is ordered that the following Protective Order be entered to give
2 effect to the terms and conditions set forth below as stipulated by and between the
3 parties.

4 1. PURPOSES AND LIMITATIONS

5 Discovery in this action is likely to involve production of confidential,
6 proprietary, or private information for which special protection may be warranted.
7 Accordingly, Plaintiff, Karen Gallion, and Defendant Medco Health Solutions, Inc.
8 (“Medco”) (collectively “parties”) hereby stipulate to, and petition the court to
9 enter, the following Stipulated Protective Order. The parties acknowledge that this
10 agreement does not confer blanket protection on all disclosures or responses to
11 discovery, the protection it affords from public disclosure and use extends only to
12 the limited information or items that are entitled to confidential treatment under the
13 applicable legal principles, and it does not presumptively entitle parties to file
14 confidential information under seal. Rather, the parties acknowledge that any party
15 seeking to seal a judicial record bears the burden of overcoming the strong
16 presumption in favor of public access to court documents with compelling reasons
17 supported by specific facts. Therefore, nothing in this Stipulated Protective Order
18 shall impact the Court’s discretion and authority to determine what documents a
19 party may file under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible
3 things produced or otherwise exchanged: Plaintiff’s disability and other medical
4 records; documents regarding the administration of the Medchoice Disability
5 Program, which Medco and other parties thereto deem confidential and
6 proprietary; and personnel information concerning non-parties.

7 3. SCOPE

8 The protections conferred by this agreement cover not only confidential
9 material (as defined above), but also (1) any information copied or extracted from
10 confidential material; (2) all copies, excerpts, summaries, or compilations of
11 confidential material; and (3) any testimony, conversations, or presentations by
12 parties or their counsel that might reveal confidential material. However, the
13 protections conferred by this agreement do not cover information that is in the
14 public domain or becomes part of the public domain through trial or otherwise.

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16 4.1. Basic Principles. A receiving party may use confidential material that
17 is disclosed or produced by another party or by a non-party in connection with this
18 case only for prosecuting, defending, or attempting to settle this litigation.
19 Confidential material may be disclosed only to the categories of persons and under
20 the conditions described in this agreement. Confidential material must be stored

1 and maintained by a receiving party at a location and in a secure manner that
2 ensures that access is limited to the persons authorized under this agreement.

3 4.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the designating party, a
5 receiving party may disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the
8 information for this litigation;

9 (b) the officers, directors, and employees (including in house
10 counsel) of the receiving party to whom disclosure is reasonably necessary for this
11 litigation, unless the parties agree that a particular document or material produced
12 is for “Attorney’s Eyes Only” and is so designated;

13 (c) experts and consultants to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the
18 duplication of confidential material, provided that counsel for the party retaining
19 the copy or imaging service instructs the service not to disclose any confidential
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1 material to third parties and to immediately return all originals and copies of any
2 confidential material;

3 (f) during their depositions, witnesses in the action to whom
4 disclosure is reasonably necessary and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
6 party or ordered by the court. Pages of transcribed deposition testimony or
7 exhibits to depositions that reveal confidential material must be separately bound
8 by the court reporter and may not be disclosed to anyone except as permitted under
9 this agreement;

10 (g) the author or recipient of a document containing the
11 information or a custodian or other person who otherwise possessed or knew the
12 information.

13 4.3. Filing Confidential Material. Before filing confidential material or
14 discussing or referencing such material in court filings, the filing party shall confer
15 with the designating party to determine whether the designating party will remove
16 the confidential designation, whether the document can be redacted, or whether a
17 motion to seal or stipulation and proposed order is warranted.
18 WDWA Local Civil Rule 5(g) sets forth the procedures that must be followed and
19 the standards that will be applied when a party seeks permission from the court to
20 file material under seal.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1. Exercise of Restraint and Care in Designating Material for Protection.

3 Each party or non-party that designates information or items for protection under
4 this agreement must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The designating party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications for which protection is not warranted are not swept unjustifiably
8 within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited.
10 Designations that are shown to be clearly unjustified or that have been made for an
11 improper purposed (*e.g.* to unnecessarily encumber or delay the case development
12 process or to impose unnecessary expenses and burdens on other parties) expose
13 the designating party to sanctions.

14 If it comes to a designating party's attention that information or items that it
15 designated for protection do not qualify for protection, the designating party must
16 promptly notify all other parties that it is withdrawing the mistaken designation.

17 5.2. Manner and Timing of Designations. Except as otherwise provided in
18 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
19 otherwise stipulated or ordered, disclosure of discovery material that qualifies for
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1 protection under this agreement must be clearly so designated before or when that
2 material is disclosed or produced.

3 (a) Information in documentary form: (*e.g.*, paper or electronic
4 documents and deposition exhibits, but excluding transcripts of depositions or
5 other pretrial or trial proceedings), the designating party must affix the word
6 “CONFIDENTIAL” to each page that contains confidential material. If only a
7 portion or portions of the material on a page qualifies for protection, the producing
8 party also must clearly identify the protected portion(s) (*e.g.*, by making
9 appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial or trial
11 proceedings: the parties must identify on the record, during the deposition, hearing,
12 or other proceeding, all protected testimony, without prejudice to their right to so
13 designate other testimony after reviewing the transcript. Any party or non-party
14 may, within fifteen days after receiving a deposition transcript, designate portions
15 of the transcript, or exhibits thereto, as confidential.

16 (c) Other tangible items: the producing party must affix in a
17 prominent place on the exterior of the container or containers in which the
18 information or item is stored the word “CONFIDENTIAL.” If only a portion or
19 portions of the information or item warrant protection, the producing party, to the
20 extent practicable, shall identify the protected portion(s).

1 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the designating party's right to secure protection under this agreement for such
4 material. Upon timely correction of a designation, the receiving party must make
5 reasonable efforts to ensure that the material is treated in accordance with the
6 provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1. Timing of Challenges. Any party or non-party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 designating party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption
12 or delay of the litigation, a party does not waive its right to challenge a
13 confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2. Meet and Confer. The parties must make every attempt to resolve any
16 dispute regarding confidential designations without court involvement. Any
17 motion regarding confidential designations or for a protective order must include a
18 certification, in the motion or in a declaration or affidavit, that the movant has
19 engaged in a good faith meet and confer conference with other affected parties in
20 an effort to resolve the dispute without court action. The certification must list the

1 date, manner, and participants to the conference. A good faith effort to confer
2 requires a face-to-face meeting or a telephone conference.

3 6.3. Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain
5 confidentiality. The burden of persuasion in any such motion shall be on the
6 designating party. Frivolous challenges, and those made for an improper purpose
7 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the challenging party to sanctions. All parties shall continue to maintain
9 the material in question as confidential until the court rules on the challenge.

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

12 If a party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL,” that party must:

15 (a) promptly notify the designating party in writing and include a
16 copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena
18 or order to issue in the other litigation that some or all of the material covered by
19 the subpoena or order is subject to this agreement. Such notification shall include
20 a copy of this agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the designating party whose confidential material may be affected.

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
5 confidential material to any person or in any circumstance not authorized under
6 this agreement, the receiving party must immediately (a) notify in writing the
7 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
8 all unauthorized copies of the protected material, (c) inform the person or persons
9 to whom unauthorized disclosures were made of all the terms of this agreement,
10 and (d) request that such person or persons execute the “Acknowledgement and
11 Agreement to Be Bound” that is attached hereto as Exhibit A.

12 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

14 When a producing party gives notice to receiving parties that certain
15 inadvertently produced material is subject to a claim of privilege or other
16 protection, the obligations of the receiving parties are those set forth in Federal
17 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
18 whatever procedure may be established in an e-discovery order or agreement that
19 provides for production without prior privilege review. Parties shall confer on an
20 appropriate non-waiver order under Fed. R. Evid. 502.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO ORDERED.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

DATED October 18, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge